



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Memorial Compounding Pharmacy

**Respondent Name**

JC Penney Corporation

**MFDR Tracking Number**

M4-17-2431-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

April 11, 2017

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "I am seeking reconsideration on this bill that has not been paid or processed by – AIG/Hellios."

**Amount in Dispute:** \$1,158.79

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "... the bill was reviewed again on 4/27/2017 and recommended an additional payment of \$678.55 for the Lyrica but the Baclofen was again denied.

The Baclofen has not been paid since July 2016 because of a ... Peer Review and subsequent ... Addendum where [the doctor] specifically addressed whether or not the use of Tylenol 3 and Baclofen are reasonable and necessary per the ODG."

**Response Submitted by:** AIG

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
May 5, 2016	Baclofen	\$480.24	\$480.24
May 5, 2016	Lyrica	\$678.55	\$0.00

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §102.4 establishes the rules for non-division communications.
3. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.
4. 28 Texas Administrative Code §133.10 defines the requirements for submitting a complete pharmaceutical

bill.

5. 28 Texas Administrative Code §133.240 sets out the requirements for payment or denial of a medical bill.
6. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
7. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
8. The documentation submitted to the division does not include explanations of benefits presented to Memorial Compounding Pharmacy prior to the request for medical fee dispute resolution.

### Issues

1. Is Memorial Compounding Pharmacy (Memorial) eligible for additional reimbursement of Lyrica?
2. Did JC Penney Corporation (JC Penney) take final action to pay, reduce, or deny reimbursement of Baclofen?
3. Is Memorial entitled to reimbursement for Baclofen?

### Findings

1. Memorial is seeking reimbursement of \$678.55 for Lyrica, dispensed on May 5, 2016. Per Explanation of Bill Review dated April 27, 2017, submitted by AIG on behalf of JC Penney, the insurance carrier reimbursed the full amount requested for this service. No further reimbursement is recommended.
2. Memorial is also seeking reimbursement of \$480.24 for Baclofen, dispensed on May 5, 2016. Memorial asserted that, "The bill was received and still in processing or has been processing since it was received ... Memorial Compounding Pharmacy has not received any type of correspondence or explanation of benefits in regards to this date of service."

The division finds that the submitted documentation includes AIG Provider Bill Inquiry indicating receipt of the bill on or before May 31, 2016. According to Texas Labor Code Sec. 408.027(b), JC Penney was required to pay, reduce, or deny the disputed services not later than the 45<sup>th</sup> day after it received the pharmacy bill from Memorial. Corresponding 28 Texas Administrative Code §133.240(a) required JC Penney to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45<sup>th</sup> day.

28 Texas Administrative Code §133.2(6) defines final action as follows:

Final action on a medical bill—

- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
- (B) denying a charge on the medical bill.

JC Penney was not relieved of its requirement to pay, reduce, or deny the disputed services not later than the 45<sup>th</sup> day after it received the pharmacy bill from Memorial, in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45<sup>th</sup> day** [emphasis added] after the insurance carrier received a complete medical bill...
- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:
  - (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

AIG argued in its position statement on behalf of JC Penney, that "The Baclofen has not been paid since July 2016 because of a ... Peer Review and subsequent ... Addendum where [the doctor] specifically addressed whether or not the use of Tylenol 3 and Baclofen are reasonable and necessary per the ODG."

JC Penney's failure to timely issue an explanation of benefits to Memorial creates a waiver of defenses that AIG raised in its response to medical fee dispute resolution under 28 Texas Administrative Code §133.307(d)(2)(F):

The [carrier's] response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review...

Absent any evidence that JC Penney raised any defenses consistent with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that JC Penney failed to take final action to pay, reduce, or deny the reimbursement of the disputed charges. This dispense of Baclofen will be reviewed in accordance with applicable fee guidelines.

3. 28 Texas Administrative Code §134.503 applies to the pharmaceutical services in dispute and states, in pertinent part:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
  - (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
    - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;
    - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount;
    - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
  - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
    - (A) health care provider; or
    - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The reimbursement for this dispense of Baclofen is calculated below:

Drug	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Baclofen	00172409780 Generic	\$4.69705	90 tablets	$(\$4.69705 \times 90 \times 1.25) + \$4.00 = \$532.42$	\$480.24	\$480.24

The total reimbursement is therefore \$480.24. This amount is recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$480.24.

### ***ORDER***

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$480.24, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

### **Authorized Signature**

_____ Signature	Laurie Garnes Medical Fee Dispute Resolution Officer	September 8, 2017 Date
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### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**